

No. 14-3006

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SECURITY NATIONAL BANK OF SIOUX CITY, IA,
AS CONSERVATOR FOR JMK, A MINOR,

Appellee,

v.

JONES DAY AND JUNE K. GHEZZI,

Appellants,

v.

ABBOTT LABORATORIES

**Appeal from U.S. District Court for the Northern District of Iowa –
Sioux City
(5:11-cv-04017-MWB)**

**MOTION FOR LEAVE TO FILE AMICUS BRIEF PURSUANT TO
FEDERAL RULE OF APPELLATE PROCEDURE 29(a)**

Pursuant to Federal Rule of Appellate Procedure 29(a), amicus curiae Stephen D. Susman and Thomas M. Melsheimer respectfully move for leave to file their attached Brief in Support of the Honorable Mark W. Bennett's Memorandum Opinion and Order Regarding Sanctions. Counsel for Appellee Security National Bank of Sioux City, IA, consented to the filing of the amicus curiae's brief; however,

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counsel for Appellants Jones Day and June K. Ghezzi took no position on the filing of the brief and neither consented nor opposed the filing.

I. Why the Movants Have an Interest in This Case

Stephen D. Susman is the Founding Partner of Susman Godfrey L.L.P. Thomas M. Melsheimer is the Managing Principal of the Dallas office of Fish & Richardson P.C. As trial lawyers with a nationwide practice who have written and spoken extensively about improving litigation conduct, Mr. Susman and Mr. Melsheimer have a significant interest in (1) ensuring that the litigation process, particularly the jury system, is an efficient and preferred tool for conflict resolution and (2) promoting the effectiveness of a jury trial by embracing a process known as “trial by agreement.” Therefore, Mr. Susman and Mr. Melsheimer seek to discourage Appellant’s conduct and encourage a more amicable and efficient approach to the litigation process.

II. Why an Amicus Brief is Desirable

This amicus brief is desirable because Mr. Susman and Mr. Melsheimer, trial attorneys who have deposed and presented many witnesses throughout the country and across the world, provide insight into the way that attorneys should conduct themselves when defending a witness’s deposition. Mr. Susman and Mr. Melsheimer explain why Judge Mark Bennett’s sanction aids the litigation process. Too many attorneys maintain a misconceived notion that every issue throughout

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litigation must be fought tooth and nail. Instead of effectively advocating for their client, attorneys, by unnecessarily engaging in obstructionist tactics, drive up the price of litigation and burden the docket with unnecessary motion practice. This conduct has the ultimate effect of undermining the public's confidence in the judicial process. Judge Bennett's sanction sends a powerful and important message to all litigators to avoid obstructionist conduct thereby creating a more dependable, and more utilized, judicial process.

III. Why the Matters Asserted Are Relevant to the Disposition of the Case

These matters that Mr. Susman and Mr. Melsheimer assert in their brief are relevant to the disposition of the case because they set forth the reasons why the district court possessed the authority to issue sanctions *sua sponte*. The brief explains why it was completely within the district court's discretion to determine an appropriate sanction for the conduct at issue. Further, the brief discusses why the sanction chosen by Judge Bennett specifically combats many of the ineffective and inefficient trial practices that Mr. Susman and Mr. Melsheimer have written about and observed in the past. Finally, the brief details how attorneys can fix the problems of obstructionist and inefficient discovery by pursuing a "trial by agreement" approach.

For all of the foregoing reasons, Stephen D. Susman and Thomas M. Melsheimer respectfully request that the Court grant their Motion for Leave to File Amicus Brief Pursuant to Federal Rule of Appellate Procedure 29(a).

Dated: November 7, 2014

Respectfully submitted,

/s/ Thomas M. Melsheimer
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AMICUS CURIAE

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**CERTIFICATE OF SERVICE
FOR DOCUMENTS FILED USING CM/ECF**

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on November 7, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Thomas M. Melsheimer